

Exhibit A

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE SOUTHERN DISTRICT OF NEW YORK

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3 EVA AGERBRINK, individually and on
4 behalf of all others similarly situated,

5 Plaintiff,

6 -against-

7 MODEL SERVICE LLC D/B/A MSA MODELS
8 and SUSAN LEVINE,

9 Defendants.

10 CASE NO.: 7841 (JPO) (JCF)

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11 250 Park Avenue
12 New York, New York

13 December 3, 2015
14 9:44 a.m.

15 DEPOSITION of Plaintiff, EVA AGERBRINK,
16 before Melissa Gilmore, a Shorthand Reporter
17 and Notary Public of the State of New York.

18
19
20
21
22
23 ELLEN GRAUER COURT REPORTING CO. LLC
24 126 East 56th Street, Fifth Floor
25 New York, New York 10022
212-750-6434
REF: 111395

1 AGERBRINK

2 conditions of the Caché offer?

3 MR. DUGGER: Same objection.

4 A. I understand. The terms and
5 condition was that it was an assistant -- it
6 was an assistant -- office assistant position,
7 namely, with a few hours of modeling. There
8 was no written how many hours of modeling it
9 was.

10 So it was -- but I understood that
11 it was doing filing and organizing closets and
12 answering phones and ordering lunch for Rich,
13 which was the manager of the department,
14 organizing a lot of files and, whenever needed,
15 try on clothes.

16 Q. What was it?

17 A. Try on clothes, which was the role
18 of a fit model, try on cloths.

19 Q. So did you work with Caché as a fit
20 model?

21 A. Yes, I did.

22 Q. Beginning when?

23 A. I do believe it was June 30.

24 Q. Of 2014?

25 A. Correct.

1 AGERBRINK

2 Q. And are you still doing that work?

3 A. No, sir.

4 Q. When did it end?

5 A. It ended in February. We were laid
6 off, about 30 of us, in 2014.

7 Q. February 2015?

8 A. '15. Sorry, '15.

9 Q. And what have you been doing in
10 terms of work since you were laid off from
11 Caché?

12 A. Well, the very first thing was I was
13 faced with a foreclosure, and so that I spent
14 my time doing first to try to avoid a
15 foreclosure and to find someone to buy the
16 apartment.

17 So that was the first thing that had
18 to be dealt with, and that meant, you know,
19 being -- showing the apartment, always having
20 the apartment available. It took a lot of my
21 time.

22 Then I, of course, looked for work
23 for a long time. I've been doing working -- as
24 far as working, I've done some background work,
25 acting work, and I moved out of my apartment

1 AGERBRINK

2 for a month to save money on the rent. That's
3 it.

4 Q. What's the address of the apartment,
5 please?

6 A. 100 Christopher Columbus Drive,
7 Apartment 1922, Jersey City, New Jersey 07302.

8 Q. Was that the only apartment or home
9 that you had around that time?

10 A. Around the time -- yes, I was living
11 in 174 Washington Street, Apartment 3A, Jersey
12 City, New Jersey 07302 that was my condo that I
13 owned that I later was able to -- well, I
14 didn't find the buyer, another realtor found
15 the buyer, and I was able to get out of the
16 foreclosure and been cleared by the bank.

17 Q. So this condo you just told us
18 about, was that the apartment that you say you
19 had a foreclosure issue with?

20 A. Correct. And then I moved into the
21 studio that I'm in now, but previous to that I
22 had an address -- before I moved into the
23 apartment, I was staying with a friend of mine,
24 which was 225 Grand Street, Penthouse Apartment
25 9, same zip code and address, Jersey City, New

1 AGERBRINK

2 condo apartment.

3 A. Okay. The more recent before that
4 was 201 Christopher Columbus Drive and that was
5 Apartment Number 3.

6 Q. Also Jersey City?

7 A. Also Jersey City, yes. Do you need
8 me to explain why I --

9 Q. No. Now you mentioned that you
10 worked with MSA twice, two separate time
11 frames?

12 A. That's correct.

13 Q. When was the first time frame?

14 A. The first time I started working
15 with them was -- it must have been around --
16 I'm not exactly sure on that date.

17 Q. What year?

18 A. 2003, around there. 2003.

19 Q. For how long?

20 A. Until Ms. Liz Pinto got me an
21 in-house position with New York & Company. I
22 started with New York & Company in 2005.

23 Q. What do you mean by got you a
24 position with New York & Company?

25 A. It was the greatest thing that ever

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2 happened to me. As Ms. Liz Pinto's job is to
3 find clients for models, and I was sent over
4 there on a Go-See, and they selected me based
5 on my measurements, and they liked me.

6 And after a few weeks, they wanted
7 me to work there full time, and Ms. Liz Pinto
8 negotiated my yearly salary. Of course, they
9 got their commission on it. And then I
10 basically left the agency because then I
11 started working for New York & Company.

12 Q. Getting back to your preparation for
13 today, what documents did you review, if any?

14 A. I read the old contract that I
15 signed when I joined MSA for the second time.
16 I read the letter that the attorney -- their
17 attorney sent me. I don't recall the name of
18 the attorney.

19 And I read some of my own notes that
20 I wrote to myself regarding the last day I saw
21 Ms. Pinto where she threatened me if I were to
22 go work for Caché, that I would never work in
23 this town again. Some of my other notes -- I
24 remember reading my own notes where I noticed
25 that there was a check that had been paid to me

1 AGERBRINK

2 A. Yes.

3 Q. Have you ever been a plaintiff or a
4 defendant in another lawsuit before this one?

5 A. No.

6 Q. Have you ever filed for personal
7 bankruptcy?

8 A. No.

9 Q. Have you ever made any claims of
10 discrimination or harassment or retaliation
11 against any individual or entity?

12 A. No, sir.

13 Q. Have you ever filed any wage and
14 hour claims against any company or entity?

15 A. I'm sorry. What was that question
16 about?

17 Q. Have you ever filed any wage and
18 hour or overtime claims?

19 A. No, sir.

20 Q. Do you have any licenses of any
21 kind?

22 A. Yes, sir. I have a real estate
23 license.

24 Q. When did you first obtain that?
25 What year approximately?

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2 MR. DUGGER: I'm just going to
3 instruct the witness not to guess. If
4 you're not sure you can give a range of
5 dates, but please don't guess.

6 A. Between 2000 and 2005.

7 Q. That was when you first obtained
8 your real estate license?

9 A. Yes, sir.

10 Q. Is that limited to a particular
11 state or jurisdiction?

12 A. Yes, sir. The first license was New
13 York State.

14 Q. And any other licenses?

15 A. Yes, sir. California state.

16 Q. Any others?

17 A. New Jersey state.

18 Q. Any others?

19 A. I took the license for New Jersey
20 twice and the license for New York twice.

21 Q. Are you currently licensed?

22 A. In New Jersey only. The others I
23 let expire.

24 Q. What do those licenses permit you to
25 do?

1 AGERBRINK

2 and later I studied English writing at
3 Georgetown University. I studied psychologist
4 at GW. This is in Washington, DC. I studied
5 psychotherapy in Regent's College in London.

6 Q. Do you have any degrees with respect
7 to any of that?

8 A. No, sir.

9 Q. What is the highest degree that you
10 possess?

11 A. The real estate license. It's
12 equivalent to -- I think in the United States
13 you call it -- some college.

14 Q. Bachelor's?

15 A. I think it's a bachelor's degree.
16 It's equivalent of three years.

17 Q. You have a high school education?

18 A. Yes.

19 Q. Did you complete a college
20 education?

21 A. No, sir.

22 Q. Have you worked as a real estate
23 broker?

24 A. No, sir.

25 Q. Have you done any work whatsoever

1 AGERBRINK

2 Q. Did you report that income on your
3 tax returns?

4 A. Yes, sir.

5 Q. When you file your tax returns, did
6 you file as an independent contractor?

7 A. Sir, I hand my paperwork to my
8 accountant and he files the taxes for me.

9 Q. Did you file as an employee?

10 MR. DUGGER: Objection, calls for a
11 legal conclusion.

12 A. I hand everything to my accountant,
13 and he does the filing for me.

14 Q. Did you get, with respect to either
15 the rentals or the commercial lease, a 1099
16 form?

17 A. Yes, sir.

18 Q. Did you get a W-2 form?

19 A. I don't know that, sir.

20 Q. Are you currently working for
21 anybody?

22 A. I do -- no, I'm not working for
23 anybody. I do background work.

24 Q. What is background work?

25 A. Background work is in a show --

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2 television show or a movie where they need
3 people in the background. Since I am part of a
4 union, Screen Actors Guild, I'm hired sometimes
5 to do background work.

6 My dog was hired in the last TV show
7 I was in, because he had a special skill,
8 because he could walk in footsies.

9 MR. SPELFOGEL: Off the record.

10 (Discussion off the record.)

11 Q. Since the last time you did any work
12 with MSA, what companies or individuals have
13 you performed any services for?

14 A. Caché.

15 Q. Is that the only one?

16 A. Yes, sir.

17 Q. And you've already told us that with
18 respect to Caché that you did filing?

19 A. Yes, sir.

20 Q. And office work?

21 A. Yes, sir.

22 Q. And a few hours of modeling?

23 A. Yes, sir.

24 Q. Who did you model for?

25 A. Caché.

1 AGERBRINK

2 Q. You've told us that you worked twice
3 with MSA.

4 A. Correct.

5 Q. The first time I think you said
6 was --

7 A. Back in, I think it was 2003.

8 Q. For how long?

9 A. Until I -- until Ms. Liz Pinto got
10 me an in-house position with New York &
11 Company.

12 Q. So that would have been in '05 then
13 approximately?

14 A. Yes.

15 Q. And when was the second time?

16 A. The second time was in 2013, I want
17 to say March.

18 Q. Until when?

19 A. Until June of 2014.

20 Q. A total of approximately 15 months?

21 A. Uh-huh.

22 Q. How did you get the position with
23 MSA the second time?

24 A. I walked in -- actually, I walked
25 in, and I was asked to come back when they have

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2 Go-Sees. I came back on a Go-See. I waited in
3 the room until I was seen by Ms. Levine, and
4 then I was measured by Ms. Pinto, and I was
5 hired, but I wasn't told I was hired that time.

6 I was told -- Ms. Levine said come
7 back in a week, and when I came back in a week
8 is when I was told that I was hired and to sign
9 the contract.

10 Q. Did you read the contract before you
11 signed it?

12 A. Sir, I skimmed the contract and I
13 signed it. I know from being in the business
14 for 20 years, if you don't sign a contract
15 no -- the agency does not want to work with
16 you.

17 Q. Was there anything in the contract
18 you did not agree with?

19 MR. DUGGER: Objection, calls for a
20 legal conclusion.

21 A. Sir, I skimmed the contract. I
22 didn't read the contract. I probably should
23 have, but I didn't. I skimmed over it.

24 Q. What do you mean by skimmed over it?

25 A. It took me about ten seconds to go

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2 A plus-size client needs a plus-size model. A
3 missy client who needs a size six, you need to
4 be size six. Missy client who needs a size
5 eight, needs a size eight.

6 So it's just having the particular
7 measurements that the client wants, but there
8 is a range also as well.

9 Q. Did you fit model in any of these
10 particular categories, that is missy or large
11 size --

12 MR. DUGGER: Objection, compound.

13 Q. -- petite?

14 A. Yes, sir. My range is a missy,
15 eight to ten.

16 Q. And what kind of garments did you
17 fit model for?

18 A. Every garment.

19 Q. Dresses?

20 A. Dresses.

21 Q. Suits?

22 A. Suits.

23 Q. Under garments?

24 A. No, sir.

25 Q. Anything else besides dresses and

1 AGERBRINK

2 Q. Did you ask them what they meant by
3 fit model?

4 A. I had no idea what a fit model was.

5 Q. How did you find out what a fit
6 model was?

7 A. They -- they explained to me that
8 basically you were like a human mannequin. You
9 need posture and you need to maintain
10 measurements.

11 Q. So getting back to this Gramercy
12 situation.

13 Gramercy you said arranged for you
14 certain Go-Sees?

15 A. Yes, they -- their job is to contact
16 clients.

17 Q. Client being what?

18 A. Their clients. They contact the
19 garment industry and they -- the garment
20 industry says we are looking for a new fit
21 model. They contact the client. They have a
22 list of models that they manage. They manage
23 their schedule. They manage everything about
24 them, the schedule -- everything, everything.
25 They communicate with their client that we have

1 AGERBRINK

2 manages.

3 A. The agent is in total control of the
4 model. The agent -- first of all, how we
5 dress, our schedule. We are not in charge of
6 our schedule. They are in charge of our
7 schedule. They tell us we have to report
8 everything we do to them. We have to report --
9 we need to take time off for emergency, we have
10 to request everything through them.

11 They send us to a place where we get
12 our haircut done. We are not ever to speak
13 with their client. We have a voucher system
14 where we have to send in the voucher in order
15 to get paid. We have to come in on biweekly
16 inspections, so that, in this case, Ms. Levine
17 can inspect her girls. That's how we get paid.

18 Q. By the way, I was asking you I think
19 about this Gramercy modeling agency I think
20 that we are talking about.

21 A. Yes.

22 Q. So what you're telling me is about
23 Gramercy?

24 A. Gramercy Models. It's exactly the
25 same way.

1 AGERBRINK

2 MR. DUGGER: Were you done with your
3 answer?

4 THE WITNESS: Yes.

5 Q. When you first began doing fit
6 modeling, was it steady work?

7 MR. DUGGER: Objection, vague.

8 Q. Do you understand what I mean?

9 A. Yes, I do. I understand.
10 When I first began as a fit model,
11 you first go on numerous Go-Sees.

12 Q. Right.

13 A. And so you don't get paid for those
14 Go-Sees. Although you were doing same work you
15 would as if you were hired, but you're not paid
16 to go on Go-Sees.

17 Q. What is the difference between a
18 Go-See and an interview?

19 A. In an interview, you are talking
20 about a specific skill that you have. On a
21 Go-See you don't talk about any skill. You
22 basically try on clothes. They look at many
23 models in a range, and you're not supposed to
24 speak. You're not supposed to talk.

25 Q. Aside from the fact that in a Go-See

1 AGERBRINK

2 you don't talk whereas in an interview you do,
3 are both of those the same in terms of the
4 client or customer trying to decide which model
5 to use for a particular job?

6 MR. DUGGER: Objection, vague,
7 compound.

8 A. They are completely different.

9 Q. Did you ever go on any job
10 interviews?

11 A. Yes, sir.

12 Q. With clients, with customers?

13 A. I went on a job interview when I
14 went to Caché.

15 Q. During the fit modeling, when you
16 did fit modeling, I think you've told us that
17 you need to use your body in different ways.

18 A. No, sir, I never said that. You try
19 on clothes.

20 Q. Yes, but don't you then make
21 movements so that the designer can see how the
22 garment falls and how the garment fits and how
23 the garment moves?

24 A. Yeah, but you do the same thing when
25 you try on clothes in the fit room. You see if

1 AGERBRINK

2 you can move.

3 Q. When you do that fit modeling --

4 A. I'm saying when you're buying
5 clothes.

6 Q. When you fit model, is there ever
7 any conversation between the designer, the
8 client, and the fit model with respect to
9 changes in the garment?

10 MR. DUGGER: Objection, vague.

11 A. My first boss that I worked for,
12 Luigi, at New York & Company always used to
13 tell me models should be seen not heard.

14 Q. I understand that. Weren't there
15 occasions, however, when you did fit modeling
16 when you did respond to questions or did make
17 suggestions?

18 MR. DUGGER: Objection, compound.

19 A. No, because I don't have the skill
20 to make the suggestion of how a garment should
21 be corrected. I don't have those skills.

22 Q. Why would a client choose one fit
23 model over another if they are both the same
24 size and same measurements?

25 A. Usually, there is more than one fit

1 AGERBRINK

2 model for a client. There are occasions when
3 the fit model gets sick and they have to have
4 another one coming in doing the job. So there
5 are usually more than one for a job for a
6 client.

7 Q. Did you ever turn down a fit
8 modeling assignment?

9 A. Never.

10 Q. Did you ever ask to have a fit
11 modeling assignment rescheduled?

12 A. Never.

13 Q. Were there ever any occasions when
14 you were working with MSA as a fit model when
15 you were not available at the time and on the
16 date that you were told there was a fit
17 modeling opportunity?

18 A. Never.

19 Q. When you did fit modeling with MSA
20 clients or customers, what kind of movements
21 during the fit modeling did you do?

22 A. This movement.

23 MR. SPELFOGEL: Let the record show
24 the witness is moving her arms.

25 A. This is the lift.

1 AGERBRINK

2 MR. SPELFOGEL: Lifting her elbows.

3 A. I would see if I could drive the
4 car.

5 Q. Making a motion with your arms in
6 front of you as if you were driving a car?

7 A. As if I were driving a car. And
8 sometimes I would be sitting down to show how
9 the -- how low the pants in the back looks
10 like, but we had people -- for QVC, we would
11 have the people that were hired at QVC, and
12 they would come in. They would do the same
13 thing because they were given all different
14 sizes.

15 Q. Did you do any bending?

16 A. No.

17 Q. Reaching?

18 A. No. Well, I mean, you call this
19 reaching? Maybe this is reaching.

20 Q. The motion of driving a car?

21 A. Yeah.

22 Q. When you were working with MSA
23 clients and customers, did they ever ask you
24 for any suggestions or information about the
25 garment?

1 AGERBRINK

2 A. No. The technical designers, they
3 have skills, and it's always better, even if
4 you're guessing, to not say anything because
5 you could be completely wrong.

6 You really don't have the skill.
7 These people are trained and skilled. They
8 have gone to school. They are really skilled
9 in their field. So you're better off trying it
10 on and they make -- they make the judgment on
11 how it should be corrected.

12 MR. DUGGER: Evan, how about a quick
13 five-minute break?

14 MR. SPELFOGEL: Sure.

15 (Recess taken.)

16 MR. DUGGER: Evan, to start off,
17 Ms. Agerbrink wants to address some of the
18 testimony she gave that I think there
19 might have been some space between what
20 you intended in your question and what she
21 answered to clarify.

22 MR. SPELFOGEL: You can take care of
23 that on redirect if you wish.

24 MR. DUGGER: I have an obligation to
25 correct testimony that I think may be

1 AGERBRINK

2 perceived as inaccurate, and she has every
3 right to correct it.

4 MR. SPELFOGEL: This is after you
5 and she talked out in the hallway during
6 your break?

7 MR. DUGGER: Correct.

8 BY MR. SPELFOGEL:

9 Q. What would you like to correct,
10 Ms. Agerbrink?

11 A. The rescheduling. I never asked to
12 have any of my jobs rescheduled. However, the
13 agency rescheduled a few of my jobs because the
14 two clients kind of coincided with each other.

15 So there was a time that QVC needed
16 me on another day and then we would have to
17 reschedule with Carole Hochman, so that I could
18 work. So I wanted just to clarify that.

19 Q. QVC and Carole Hochman were both
20 what?

21 A. They were both the clients of MSA
22 that I worked for, yeah.

23 And the other thing I wanted to
24 correct is when you asked me about -- I was
25 asked about the corrections. I never gave a

1 AGERBRINK

2 corrections as how to fit a garment.

3 However, I would give my opinion on
4 whether I felt it was too tight or I had
5 restricted movements or if it was itchy, but
6 those are opinions. Those are not -- those are
7 not -- I'm not telling someone how to correct
8 the garment.

9 Q. Besides too tight, itchy or
10 restrictive, did you give any other opinions?

11 A. Yeah, that like it was too short,
12 sleeve length too short. Sometimes they ask do
13 you feel sexy in the dress. Again, that's an
14 opinion. I don't feel sexy in the dress.

15 Q. So when a -- do you call this
16 company that you're doing the fit modeling for
17 a client, a customer?

18 A. They are a client of the modeling
19 agency. They are not my client. If they were
20 my client, I would be a contractor of them.

21 Q. And what did you respond when you
22 were asked if you feel sexy?

23 A. Sometimes yes. Sometimes no.

24 Q. And with respect to the sleeve
25 length, did they ask you is the sleeve length

1 AGERBRINK

2 the right length?

3 A. No, never.

4 Q. You volunteered your opinion?

5 A. Yeah, because that's the job of the
6 technical designer to see that.

7 Q. And when you --

8 A. Most models don't know even the
9 sleeve length.

10 Q. When you commented that something
11 was too short, the sleeve length was too short,
12 was that in response to a specific question?

13 A. No.

14 Q. You just gave your opinion?

15 A. Yeah, my opinion. In fashion,
16 sleeve lengths are all over. So you really
17 don't know. Some designers want the sleeve
18 length to be much longer and some of them want
19 them to be much shorter.

20 So it's not a professional answer to
21 answer. It's really, what do you think, it's
22 too short?

23 Q. What did you mean when you say you
24 gave your opinion that a garment was itchy?

25 A. You can put on a sweater in a store

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2 MR. DUGGER: Objection, vague.

3 A. It was all different. Every week
4 was different, but we limited the fittings to
5 two days a week between about 9, 9:30, break
6 for lunch, to about maybe 2:30 in the
7 afternoon, but because of the changes that the
8 company was going through, it was all
9 different. It was all changed.

10 Q. On the days that you were doing fit
11 modeling with Caché, these two days a week you
12 said, did you also do filing?

13 A. Yes, I did.

14 Q. Office work?

15 A. Yes.

16 Q. So how many hours on average did you
17 do fit modeling work for Caché?

18 A. Per day?

19 Q. Per day on the days you did fit
20 modeling.

21 A. On the days that we did, four hours,
22 maybe five hours. The fittings were in five
23 minutes, ten minutes. That's how they put them
24 in.

25 Q. You mentioned a union that you were

1 AGERBRINK

2 couldn't handle my expenses anymore, and I
3 didn't know what to do. I wanted more than
4 anything else to stay working with the agency.

5 Q. The agency being MSA?

6 A. MSA. I will always remember, for
7 the rest of my life, when Ms. Pinto got me the
8 job for New York & Company. And I thought
9 that -- you know, I really believed that this
10 could happen again, but when I was treated so
11 poorly and so unprofessional, and I was
12 constantly told that I was -- you know, they
13 wanted newer, they wanted younger models, and I
14 couldn't get any Go-Sees at the end, and I was
15 sent down to QVC in the midst of the winter
16 with the snow we had.

17 I was not sent my paychecks. I
18 asked for my paychecks. I had to pay for two
19 apartments because they had a client that I was
20 working for up in New York and the client down
21 in QVC, driving back and forth and not being
22 paid for three months. I had no other way of
23 going but to look for employment on my own.

24 And on top of that, Ms. Levine, I
25 remember sitting in the office, and she said

1 AGERBRINK

2 times are tough, times are really hard, times
3 are really hard, you know, why don't you go out
4 and look for work.

5 Q. And this is while you were under
6 contract with MSA?

7 MR. DUGGER: Objection, calls for a
8 legal conclusion.

9 A. Yes.

10 Q. Was that during the term of your
11 contract with MSA?

12 A. Yes.

13 Q. What did you do with respect to
14 looking for other work on your own?

15 A. I had been a model for 20 years, and
16 I have always worked for an agency. The agency
17 is the one that gets you the job. They manage
18 your schedule. They collect the money from the
19 client, and they pay you. It's very, very
20 difficult to be a model and try and do it as an
21 independent contractor because you have to make
22 sure that you're paid and this is the job of
23 the agency.

24 So, I'm sorry, I'm rambling. What
25 was the question?

1 AGERBRINK

2 MR. SPELFOGEL: Read back the last
3 question, please?

4 MR. DUGGER: Maybe you should just
5 talk and then you can ask a couple of
6 questions at the end.

7 MR. SPELFOGEL: Read back the last
8 question.

9 (Record read.)

10 A. Right. So I hadn't been paid for
11 over three months and my -- the girl I was
12 working with at QVC said to me, well, you know,
13 usually what they do if -- you know, they keep
14 your money and you're lucky that you're paid at
15 all.

16 And she wanted me to contact
17 Mr. Higgins that had been working with MSA. I
18 think I left a message for him, but I actually
19 never spoke with him because I was so -- just
20 the whole thing was just so horrible.

21 And I basically -- I couldn't pay my
22 bills. I couldn't pay my car insurance, and my
23 boyfriend at the time said to me, basically,
24 are you an idiot? If the agency are not going
25 to get you any clients, you have to go out and

1 AGERBRINK

2 find your own client.

3 And Terri, who's always on LinkedIn,
4 she found the job on LinkedIn. She said, here,
5 they're looking for someone like you. And she
6 helped me put -- write my LinkedIn because I'm
7 not very good, you know, with the marketing
8 thing. I have never had to market myself or
9 advertise or anything.

10 So she showed it to me, and I wrote
11 a letter to the girl that had -- the girl that
12 was looking for people at Caché, and she
13 responded to me. So that's what happened.

14 Q. Did you talk to anybody at MSA
15 around that time about ending your contract
16 with MSA?

17 A. Yes, many times.

18 Q. Who did you speak to?

19 A. I spoke with Liz many times. I
20 remember saying to Liz, Liz, I can't -- you
21 know, why did you sign me exclusively if you're
22 not going to find any work. And she kept
23 reminding me, well, you're on an exclusive
24 contract. You can't go to work for anyone
25 else. You're signed exclusively for three

1 AGERBRINK

2 years.

3 And it was a nightmare. A total
4 nightmare.

5 Q. Who is Mr. Higgins?

6 A. Mr. Higgins was the director for MSA
7 from I think 19 -- this is what's in his
8 LinkedIn, from 1999 to, I think, 2010.

9 Q. And what did he have to do with
10 getting you work?

11 A. No, I never met Mr. Higgins when I
12 was working. I was always -- I was always
13 working for Liz Pinto, and I only had a chance
14 to meet Higgins in October of this year.

15 Q. 2015?

16 A. Yes, sir.

17 Q. Did you ever contact Mr. Higgins
18 back in 2014 when your jobs were drying up at
19 MSA?

20 MR. DUGGER: Objection, vague.

21 A. I left a message, but I never spoke
22 with Higgins. It was Terri Murray who
23 suggested that I speak with him because she
24 knew a lot of -- she knew that Mr. Higgins had
25 gone through a lot with MSA.

1 AGERBRINK

2 poured out of his heart everything that he had
3 gone through when he was working for MSA.

4 Q. And that was when in 2015?

5 A. October. Mr. Higgins had nothing
6 but negative things to say about Model
7 Services, and he said to me that when Bill
8 Ivers came in, everything changed and how
9 models were not paid and how they used the
10 models pay to pay for other things.

11 Q. Did I understand you to say before
12 that you were told that MSA couldn't pay you
13 because the client hadn't paid MSA?

14 A. I was told that by Liz Pinto, yes.

15 Q. So is it typical that the client
16 pays MSA for your services and MSA then pays
17 money over to you with respect to those
18 services?

19 A. Yes. MSA wouldn't pay us our salary
20 if we haven't turned in the voucher.

21 Q. Tell me about the voucher. What is
22 the voucher?

23 A. A voucher system is something I --
24 after I go in and I try on the garment, the
25 outfit, whatever it is, I hand over a voucher

1 AGERBRINK

2 which tells them who my employer is, which says
3 MSA, what type of work I did, which was in this
4 case fit modeling.

5 I fill in the day. I fill in the
6 time, and I need I get a signature from their
7 client that they sign. Then I take that
8 voucher and I have to turn it over to my
9 employer, which is MSA in order to get paid.

10 Q. Now, you say your employer, MSA.
11 Doesn't the voucher say on the face of the
12 voucher that the client, the customer is the
13 employer?

14 A. I actually never read the fine print
15 on a voucher. You have to turn in the voucher
16 to your employer, which is MSA. They are the
17 ones who pay me.

18 Q. They are the agent you told me.

19 A. No, MSA is the employer. I work for
20 MSA. I don't work for their client.

21 Q. That's not what you told us before.
22 You said MSA was your agent.

23 MR. DUGGER: Asked and answered.

24 A. MSA is the employment agency. They
25 have -- I guess they call them agent -- bookers

AGERBRINK

is another word for an agent, booker. So Liz
Pinto works for MSA. She's a booker.

Q. She works with you; is that right?

And she helped get you jobs; is that right?

A. Ms. Liz Pinto's job is to contact clients and then to send me, that work for the agency, to send me to the client, their client, and hopefully their client will pick me as the model.

Q. And when they pick you as a model and you perform fit modeling for them, you fill out a voucher?

A. Yes.

Q. Is it a multipart voucher?

MR. DUGGER: Objection, vague.

A. I don't understand.

Q. Is it a voucher that has additional
copies?

A. Yes, sir. Yeah.

Q. And what do you do with the voucher and the copies?

A. Okay.

MR. DUGGER: Asked and answered.

A. When I was working for QVC, I would

1 AGERBRINK

2 take a photograph of the voucher and then
3 e-mail that the next minute to Liz.

4 Q. Do you give that voucher -- did you
5 give that voucher to the customer?

6 MR. DUGGER: Objection, vague.

7 A. They take the voucher. They sign
8 it, and they keep one copy, yes.

9 Q. They keep one copy after they sign
10 it?

11 A. Uh-huh.

12 Q. And you have a copy?

13 A. Yes, sir.

14 Q. And you make a photograph of that
15 copy?

16 A. Well, I don't make a photograph of a
17 copy for myself. I make a -- if I am not able
18 to turn in that voucher, Ms. Pinto and I
19 realized that it would be faster for me to
20 photograph since I was working and e-mail it,
21 then to come in on Monday and turn in the
22 voucher.

23 Q. And you keep a copy of it yourself?

24 A. Yes.

25 Q. And now, is it the customer who set

1 AGERBRINK

2 sir, but maybe it's just showing that I was
3 there for the hour that you sent me to your
4 client. I did go there and here is the proof
5 that I was there.

6 Q. The voucher would have your name on
7 it?

8 A. No, I fill in my name.

9 Q. Yes, that's what I mean. When you
10 hand the voucher to the client, it has your
11 name?

12 A. Yes.

13 Q. The date of service?

14 A. Yes.

15 Q. The rate?

16 A. I fill in the rate, yes.

17 Q. The time?

18 A. Yes.

19 MR. DUGGER: Evan, just to clarify,
20 what do you mean by time?

21 Q. The time of the performance of the
22 services.

23 A. Yes.

24 MR. SPELFOGEL: Let's mark this as
25 Agerbrink 1.

1 AGERBRINK

2 Q. Yes, we're talking about -- all my
3 questions are now going to relate to 2013 to
4 2014 when you worked for MSA.

5 Were there any days that you didn't
6 work for any MSA clients?

7 A. Yes, there were.

8 Q. Were there weeks when you did not
9 work for any MSA clients?

10 MR. DUGGER: Objection, vague.

11 A. Yes, there was -- no -- yes, I'm
12 sorry. That's correct.

13 Q. So starting from March of 2013 going
14 right up till you stopped working with MSA in
15 summer of 2014 --

16 A. June.

17 Q. -- June of 2014, approximately how
18 many weeks in that 15-month period did you do
19 no work at all for any MSA clients?

20 MR. DUGGER: Objection, vague.

21 A. There were weeks that I only had
22 Go-Sees that I did not get paid for any of
23 MSA's clients.

24 Q. Didn't you work with QVC every week
25 during that period of time?

1 AGERBRINK

2 between Christmas and New Year's -- I don't
3 recall, but --

4 Q. There may have been a week between
5 Christmas and New Year's where you did not work
6 at QVC?

7 MR. DUGGER: Mischaracterizes prior
8 testimony.

9 A. Right.

10 Q. But other than that, did you work
11 for QVC every week from October of 2013 to June
12 of 2014?

13 MR. DUGGER: Mischaracterizes prior
14 testimony.

15 A. I worked for MSA every week except
16 for I think the Christmas week from when --
17 from when they hired MSA till when I left.

18 Q. When you say you worked for MSA --

19 A. Right.

20 Q. -- was that work work that you
21 performed at QVC?

22 A. Correct.

23 Q. Approximately how many hours did you
24 perform services at QVC during that period of
25 time each day on average?

1 AGERBRINK

2 A. Some weeks it was 12 hours and some
3 weeks it was 22 hours.

4 Q. Was it ever more than 22 hours?

5 A. Never.

6 Q. Was it ever less than 12 hours?

7 A. I don't recall. I think 12 was --
8 actually, I don't recall that, but I want to
9 recall that it was 12 hours.

10 MR. DUGGER: He's not asking you to
11 guess, Ms. Agerbrink. So give a range if
12 you're not sure, but please don't just
13 guess.

14 A. There were days I would drive down
15 to their client and --

16 Q. Drive down to QVC in Pennsylvania?

17 A. Drive down to Westchester.

18 Q. That's Westchester, Pennsylvania not
19 Westchester, New York?

20 A. Westchester, Pennsylvania. I would
21 drive down on Tuesday afternoon, and then I
22 wouldn't start fittings until sometimes
23 10 o'clock, and we were finished at 1 o'clock.

24 Q. What did you do, if anything, before
25 you started fittings?

1 AGERBRINK

2 Q. Did you ever exchange e-mails with
3 Athena?

4 A. Yes, I did.

5 Q. About what?

6 A. She would tell me sometimes what
7 time the fittings -- actually, no.

8 I don't know if there was by text
9 message or e-mails about the time that we would
10 start fitting, but there was -- I exchanged
11 e-mails through MSA about the time that MSA had
12 fired me from working at QVC because they
13 couldn't reach me during the day. There were
14 several e-mails that was going back and forth,
15 but everything was through MSA.

16 Q. During the time from October of 2013
17 to June 2014, did you exchange e-mails with
18 Athena?

19 A. Yes, through MSA regarding --

20 Q. When you say through MSA, what do
21 you mean?

22 A. Everything has to be -- everything
23 has to be -- go through MSA. You can lose your
24 job if you -- if you try to negotiate or talk
25 about anything. It's their client so you can

1 AGERBRINK

2 not the author.

3 BY MR. SPELFOGEL:

4 Q. Did you receive a copy of this?

5 A. Right now I did.

6 Q. Did you have a communication with
7 anybody at QVC around January 6 of 2014,
8 concerning the substance of that page?

9 MR. DUGGER: If you recall.

10 A. Yes, sir. I had several text
11 messages from Athena regarding the start time.

12 As you can see most of these are
13 after the agency is closed. It's 6:45, 6:46,
14 10:36 at night. At that time my employer is
15 closed, and so, therefore, the way that Liz
16 Pinto suggested is to receive it per text, and
17 then I would text Liz Pinto and let her know
18 that I got the start time.

19 Q. Now, for example, the third of these
20 pages in the group message body reads, "So we
21 can't start at 10 and go to 5 on Wednesdays?"

22 Do you see that?

23 A. Yes, sir.

24 Q. Did you say that to somebody at QVC?

25 A. Yes, sir. It's right there.

1 AGERBRINK

2 Q. And on the next one, the fourth
3 page, in the message body, "If I have to cancel
4 tomorrow, can you give me Monday or Tuesday as
5 a fitting day?"

6 MR. DUGGER: Sorry. Just so the
7 record is clear, you're skipping the first
8 sentence.

9 MR. SPELFOGEL: About a forecast for
10 more snow, yes, I'm skipping that.

11 Q. I'm reading the next sentence that
12 reads, "If I have to cancel tomorrow, can you
13 give me Monday or Tuesday as a fitting day?"

14 Is that a message that you conveyed
15 to someone at QVC?

16 A. No, sir, this is a message from
17 Athena saying if she has to cancel, I believe.

18 MR. DUGGER: Just for the record,
19 the document states that this chat is from
20 Athena not from plaintiff.

21 A. I never canceled a fitting because
22 of the weather. I rented a car so that I could
23 get down there.

24 Q. Did you ever ask for a fitting to be
25 rescheduled to a different day?

1 AGERBRINK

2 A. No, sir.

3 MR. DUGGER: Objection, vague.

4 A. I never did. I think I recall
5 asking to start later because of the snow and
6 the time that it took to get down to
7 Westchester. If you are not on time for your
8 agency's client, you can get fired for that.

9 Q. Is it the agency or is it the -- or
10 was it QVC that was setting the times for these
11 modeling?

12 MR. DUGGER: Objection, vague.

13 A. QVC communicates with the agency,
14 and the agency manages your schedule. So the
15 agency can say no, she cannot work for you on
16 such and such day. It's ultimately the --

17 Q. Because you had a conflict with some
18 other assignment?

19 A. Because I may have a conflict with
20 another one of their clients.

21 MR. DUGGER: I need to put on the
22 record that this set of e-mails --

23 MR. SPELFOGEL: Text messages.

24 MR. DUGGER: -- text messages,
25 excuse me, the vast majority are authored

1 AGERBRINK

2 A. About the time we would start, yes,
3 because the time that they would start would
4 not be decided until after the -- MSA is
5 closed. So MSA aren't able to call me during
6 the office hours because, as you can tell, the
7 decision on what time to start was a lot of
8 times after 10 o'clock at night.

9 So it was Liz Pinto's suggestion
10 that we do over text, and when I would receive
11 the text, I would then text Ms. Liz Pinto and
12 let her know we're starting at 9:30 tomorrow.
13 People go to bed at 10 o'clock at night, and it
14 was my responsibility to be there on time.

15 Q. To be there on time because QVC
16 wanted you there at a certain time?

17 A. Yeah, QVC wants -- QVC would have
18 either -- they would have called up MSA and
19 basically fired them if I don't show up there
20 on time.

21 Q. Does MSA make or sell any clothing?

22 A. I don't know, sir.

23 Q. As far as you know, did they?

24 A. I don't think so, sir.

25 Q. Did QVC make or sell any clothing?

1 AGERBRINK

2 A. They sell clothing, but I don't
3 think it's their own clothing. They sell
4 clothing through their network.

5 Q. Whose clothing is it?

6 A. Various designers. Isaac Mizrahi.
7 You need me to --

8 Q. If you can recall just a handful,
9 that's fine. Give us an idea.

10 A. Let me see. Barely There, Dennis
11 Basso. About 20 different designers.

12 Q. And QVC, can you explain what kind
13 of company that was, if you know?

14 A. I do know that QVC, they sell
15 merchandise on television. They have their own
16 television -- I guess is it on cable or regular
17 television? They sell merchandise.

18 Q. And the merchandise is manufactured
19 by other companies; is that right?

20 A. Yes.

21 Q. And none of that merchandise is
22 manufactured by or sold by MSA; is that right?

23 A. No.

24 Q. It is correct that it is not
25 manufactured or sold by MSA?

1 AGERBRINK

2 A. MSA does not manufacture clothes
3 that is sold by QVC, no. Actually, I take that
4 back because I don't know. I can't say that
5 for sure. I don't know.

6 Q. As far as you know?

7 A. As far as I know.

8 Q. MSA doesn't make clothes?

9 A. No, I don't think so.

10 Q. I don't believe you identified who
11 Jessica is.

12 A. Jessica worked for QVC. She works
13 together with Athena.

14 (Discussion off the record.)

15 MR. SPELFOGEL: Mark this as
16 Agerbrink 4.

17 (Agerbrink Exhibit 4, E-Mail Chain,
18 Bates Stamped MSA000767 through 770,
19 marked for identification.)

20 MR. DUGGER: Take your time to read
21 through the document.

22 THE WITNESS: Uh-huh.

23 A. (Perusing.)

24 Q. Have you had a chance to read
25 through it?

1 AGERBRINK

2 went down for the Go-See.

3 Q. And Athena is then telling Liz that
4 it was a pleasure meeting you and Francine and
5 couldn't say enough about their
6 professionalism?

7 A. Yes.

8 Q. My question to you is, do you have
9 any idea what is meant by professionalism in
10 that sense?

11 A. I think we -- you know, we looked
12 like models when we showed up. We had good
13 attitudes, and when asked our opinion, maybe we
14 gave good opinions. And it's -- you know, it's
15 first impression, and I thought -- I believe
16 she was impressed with us.

17 Q. And in the rest of that e-mail
18 message on September 24, Athena is telling Liz
19 that QVC needs a model to be there on Thursday,
20 October 3, 8:30 to 3:30 p.m. and another one on
21 Friday, October 4 for the same time frame; is
22 that right?

23 A. Yes.

24 MR. DUGGER: Which page are you on,
25 Evan?

1 AGERBRINK

2 MR. SPELFOGEL: The third page.

3 A. Yes.

4 Q. From that e-mail, who was doing the
5 scheduling?

6 A. Model Services did the scheduling.

7 Q. Isn't that Athena telling Model
8 Services, telling Liz the schedule and the days
9 that QVC wants?

10 A. She is telling them what time she
11 needs a model there, and it's up to Model
12 Services to clear our schedule to who is going
13 to be down there. I happened to have a car.
14 Francine did not have a car, and I recall --
15 I've never turned down a job.

16 So I told Liz Pinto I can be there
17 either day.

18 Q. So on the second page, the top
19 e-mail.

20 MR. DUGGER: MSA 768.

21 MR. SPELFOGEL: Yes.

22 A. Uh-huh.

23 Q. Liz writes to you, "Does one day
24 work better than the other, Thursday, October 3
25 or Friday, October 4?"

1 AGERBRINK

2 A. Uh-huh.

3 Q. And you then said either day, you
4 could switch your schedule?

5 A. Uh-huh. Yes.

6 Q. When you were working with MSA from
7 March of 2013 to June of 2014, what, if any,
8 upkeeping or grooming practices did you
9 maintain?

10 MR. DUGGER: Objection, vague.

11 Q. Do you know what I mean?

12 A. Yes, sir. I do know what you mean.

13 Q. Thank you.

14 A. I didn't do anything different than
15 I would normally do. I've always maintained my
16 diet, my measurements. I've always spent time
17 in the gym. I didn't do anything different
18 than I would do normally.

19 Q. You also took care of your nails?

20 A. I've always taken care of my nails,
21 sir.

22 Q. Your hair?

23 A. Always taken care of my hair, sir.

24 Q. And did you pay for all of this?

25 A. Yes, sir.

1 AGERBRINK

2 Q. Was maintaining these practices that
3 you've just described necessary in order to get
4 the assignments?

5 MR. DUGGER: Objection, vague.

6 A. As a matter of fact, several -- on
7 many occasions, Liz told me not to work out and
8 eat more carbs.

9 Q. Why was that, if you know?

10 A. Because you want to have soft
11 curves. So sometimes it's really -- you have
12 measurements. You have to keep those
13 measurements. So it's -- you do nothing
14 different than really -- but maybe I didn't
15 want to eat as many carbs as I did.

16 Q. Did you have any professional
17 headshots taken, during this time we're talking
18 about?

19 A. Not headshots, but I had
20 photographs, yes.

21 Q. What kind of photographs? How would
22 you describe those photographs?

23 A. Taken by a professional
24 photographer.

25 Q. Full body?

1 AGERBRINK

2 A. Full body shot -- well,
3 three-quarter shot.

4 Q. Why did you do that?

5 A. I wanted to. First of all, I
6 thought it would help me -- help -- I mean, you
7 have to give photographs to your agency,
8 otherwise when they communicate with their
9 client, they can't just say I got this girl
10 that's great. You know, their clients want to
11 see, well, can we see, you know, who are your
12 employees?

13 Q. So you have a folio of photographs?

14 A. No, fit models don't use portfolios,
15 no. We don't even carry a comp card around.
16 It's the agency, the employment agency that
17 sends out comp cards to their clients.

18 And the clients get the comp card,
19 and they call up the agency, and they say I got
20 X A of cards here of yours girls. I would like
21 to see this one, this one, this one, and you
22 show up and you don't bring anything.

23 Q. And who paid for the photographs?

24 A. I paid for the photographs, but I
25 have used those photographs for many different

1 AGERBRINK

2 things. I'm using the photographs right now to
3 do -- help do fund raising for children that
4 get into drugs in schools. I use the
5 photographs on Match dot com.

6 Q. Don't all the models, to your
7 knowledge, carry comp cards with them when they
8 go to clients?

9 A. Not fit models, no.

10 Q. Did you have a comp card?

11 A. I had a few.

12 Q. Did you carry them with you?

13 A. No, sir. The comp cards are at the
14 agency, so that the agency can send out those
15 comp cards to their clients.

16 Q. They are also online, aren't they?

17 A. Yes.

18 Q. Were you encouraged by MSA to test
19 often, so you have a more diversified
20 portfolio?

21 MR. DUGGER: Objection, vague.

22 A. No, sir.

23 Q. Did you ever ask Liz at MSA which
24 photographers that she might recommend for you?

25 A. Yes, sir. I asked once, and she was

1 AGERBRINK

2 honest. She said here is a list. You got to
3 go meet them.

4 Q. Do you recall if she recommended
5 Steven Menendez?

6 A. No, sir.

7 Q. What about Quro, Q-U-R-O?

8 A. No, sir.

9 Q. Jessica Larovie, L-A-R-O-V-I-E?

10 A. No, sir.

11 Q. Liz never recommended those people
12 to you for photography?

13 A. No, sir. I don't remember that.

14 Q. Do you recall Liz furnishing to you
15 prices that different photographers charged?

16 A. No, sir. We didn't discuss price.
17 I might have asked her -- I don't recall it,
18 but I might have asked her, you know, how much
19 it is, but I don't recall it.

20 Q. Do you know what a digital marketing
21 fee is?

22 A. Yes, sir.

23 Q. What is it?

24 A. I know that it's \$240.

25 Q. And what is it for?

1 AGERBRINK

2 A. It's for the modeling agency to, you
3 know -- they're the employment agency. They
4 have models that they hire, and in order to
5 get -- for them to get clients, they have to
6 have a digital website where they show the
7 models that work for them.

8 Q. So it's used for a website and
9 online marketing; is that right?

10 A. Yes, sir.

11 Q. Is it used for portfolio management?

12 MR. DUGGER: Objection, vague.

13 A. I don't know that. I don't work
14 inside the agency, but a fit model -- a fit
15 model doesn't need a portfolio.

16 Q. So is there any particular reason
17 why Liz would furnish you with that
18 information?

19 A. You need a photograph.

20 MR. DUGGER: What do you mean by
21 portfolio, Evan, just to clarify?

22 Q. Do you know what portfolio means?

23 A. Yes, sir.

24 Q. What does it mean?

25 A. Print models carry portfolios.

1 AGERBRINK

2 Q. What's the difference between a
3 print model and a fit model?

4 A. It's a huge difference. Print model
5 work on occasions with print jobs. The rate
6 for a print job is -- it's much, much higher.

7 Fit model is basically a living
8 mannequin that throws on clothes, and it's not
9 about how great your photographs look or if you
10 carry a portfolio. I know print models carry
11 portfolios.

12 MR. SPELFOGEL: We will mark as the
13 next Agerbrink Exhibit Number 5.

14 (Agerbrink Exhibit 5, E-Mail Chain,
15 Bates Stamped MSA000714 through 715,
16 marked for identification.)

17 A. Can I add something to that?

18 Q. Sure.

19 A. I think I recall that I was the one
20 who asked Liz I want to get some new pictures
21 done, and so she handed me the list.

22 Q. And does that relate to Agerbrink
23 Exhibit Number 5 that I've just shown you?

24 A. No, it was related to the question
25 you asked me before.

1 AGERBRINK

2 Q. Now, what is this book and comp
3 cards that you had done?

4 A. I wanted to buy the book, which
5 is -- it says MSA on it. I just wanted to buy
6 the book, so I could keep my photographs in it.

7 And the comp cards were the comp
8 cards that MSA used to send out to their
9 clients. And I guess I'm saying that I bought
10 a book and I had comp cards done. So I was
11 questioning why I was charged another \$240.

12 But there's no requirement to buy
13 the book. MSA doesn't make you buy the book.

14 Q. And on the first page, the first
15 e-mail from -- the e-mail from Liz to you on
16 April 7 at 11:45 a.m. in the middle paragraph,
17 you see where it says -- Liz wrote, "As for
18 images, I encourage models to test often so
19 that there is a more diversified portfolio."

20 A. Yes, sir.

21 Q. "The more images a model has, the
22 more opportunity available."

23 A. Yes, sir.

24 Q. "You could use a great dress shot,
25 some updated images," and then do you see her

1 AGERBRINK

2 Q. But you only work as a fit model; is
3 that right?

4 A. I only worked as a fit model. The
5 photographs that I ended up taking with Fadil,
6 the ones that I liked, was not the ones that
7 were used on -- on the website.

8 Q. Is there any particular --

9 A. So I didn't like the photographs, so
10 I guess I questioned it.

11 Q. Is there any particular technical
12 language that a fit model would use in talking
13 with a designer?

14 A. No, sir.

15 Q. Between March of 2013 and June 2014,
16 did you ever do any runway work?

17 A. No, sir.

18 Q. Any fashion work?

19 A. No, sir.

20 Q. Showroom work?

21 A. No, sir.

22 Q. Any other types of modeling besides
23 fit modeling?

24 A. No, sir.

25 Q. Approximately how many different

1 AGERBRINK

2 A. Yes, for the client of the agency.

3 Q. Do you know in advance how many fit
4 models the client of the agency is going to
5 retain?

6 A. Never. The client usually calls
7 several employment agencies, several agencies.

8 Q. So some of the models who are there,
9 the fit models who are there at the same time
10 you are, might be coming from a different
11 agency not from MSA?

12 A. I don't know that because I don't
13 know all the fit models.

14 Q. How do you find out that your fit
15 modeling was successful?

16 A. By my agent. Liz will call me up,
17 and she will say they liked you and they want
18 you to come back again or sometimes they liked
19 you and they would like to start booking you.

20 Q. So during the period from March of
21 2013 to June of 2014, when you were working
22 with MSA, approximately how many Go-Sees did
23 you go on?

24 A. Twenty. I don't have an exact
25 number, sir.

1 AGERBRINK

2 Q. What do you mean by that?

3 A. When I first started working for
4 MSA, their job is, of course, to get me out to
5 work, so I can make money for them and --

6 Q. So you had more Go-Sees then?

7 A. Right. And then when I started --
8 when they got me -- when they got QVC to hire
9 them, then I was limited to the amount of days
10 that I was in New York.

11 Q. So that was starting in October of
12 2013?

13 A. Uh-huh.

14 Q. You had no Go-Sees from then
15 until --

16 A. No, that's not correct.

17 Q. You had fewer Go-Sees?

18 A. Yes, sir.

19 Q. Approximately how many Go-Sees per
20 week did you have after you began working with
21 QVC?

22 A. Many weeks I had no Go-Sees. I
23 would usually not have more than one Go-See a
24 week while I was working for their client, QVC.

25 Q. Were all the Go-Sees you went to

1 AGERBRINK

2 after the first few weeks with MSA here in the
3 New York City area?

4 A. Yes.

5 Q. You didn't have to go down to
6 Pennsylvania?

7 A. No, all of them were in New York.

8 MR. DUGGER: When was the period you
9 said?

10 MR. SPELFOGEL: After the first few
11 weeks beginning with MSA.

12 A. All the Go-Sees were in New York
13 City.

14 Q. Were the ones, the first few weeks
15 with MSA, also within New York City?

16 A. The first few weeks that I joined --
17 that I started working for Model Services, I
18 don't recall having any Go-Sees the first
19 couple of weeks.

20 Q. Then you began having Go-Sees?

21 A. Correct, and they were in the New
22 York City area.

23 Q. All your Go-Sees were in the New
24 York City area?

25 A. Yes.

1 AGERBRINK

2 Q. Were you ever told by Liz Pinto or
3 anybody else at MSA that when you go on a
4 Go-See you should try -- not try on more than
5 three garments?

6 A. Yes.

7 Q. Were you also told you should try
8 not to have the Go-See last for more than 15 or
9 30 minutes?

10 A. Well, it's in the best interest for
11 the agency to be able to get you to see as many
12 clients as they can, but you're not in charge
13 of your time and your schedule, but, yeah, they
14 tell you don't try on more than three outfits
15 because a lot of clients use Go-Sees for the
16 model and they don't pay for it.

17 Q. So the client doesn't pay for a
18 Go-See. Is that the standard procedure in the
19 industry?

20 A. Yes, sir. Or the other way around,
21 the agency doesn't charge the client for models
22 that do Go-Sees when they really should because
23 we do the same amount of work as we do when we
24 work and we get paid for it.

25 Q. During the time that you were

1 AGERBRINK

2 working with MSA this second time around,
3 besides your income from MSA and the real
4 estate income you've told us you had, did you
5 have any other income?

6 A. Yes, sir. I worked for a week and a
7 half in a spa.

8 Q. Approximately when, if you can
9 recall?

10 A. It was -- well, it was --

11 MR. DUGGER: I don't want you to
12 guess.

13 Q. Was it the summer of 2013, your
14 first summer working with MSA?

15 A. No, it wasn't the summer. It was --
16 I can't guess, but it was before I started
17 working with Carole Hochman. I recall it was
18 winter, December -- the talks about it was
19 December 2012. So I don't recall. It was a
20 week and a half.

21 Q. Did you receive an IRS form W-2 with
22 respect to that income?

23 A. Yes, I did --

24 MR. DUGGER: Objection, vague.

25 A. -- I don't know what I received, but

AGERBRINK

AFTERNOON SESSION

(Time noted: 1:40 p.m.)

E V A A G E R B R I N K, resumed and
testified as follows:

CONTINUED EXAMINATION

BY MR. SPELFOGEL:

Q. You mentioned a company by the name of Carole Hochman.

A. Yes.

Q. What is that?

A. Carole Hochman is a client of MSA that I went and performed fittings for.

Q. When?

A. During -- during the time I was hired by MSA.

Q. The second time around?

A. Second time around. And also while I was with QVC.

Q. Did you do any work with Carole Hochman when you were in-house with Caché?

A. Yes.

Q. When was that?

A. But I wasn't in-house with Caché.

Q. Clarify.

1 AGERBRINK

2 believe that is something added by
3 defendants' discovery team and not on the
4 original document.

5 MR. SPELFOGEL: Thank you.

6 (Agerbrink Exhibit 6, E-Mail Chain,
7 Bates Stamped PLS00002179, marked for
8 identification.)

9 MR. DUGGER: Take your time to read
10 through these.

11 THE WITNESS: Okay.

12 A. (Perusing.)

13 Q. By the way, as you're looking
14 through this, just let me ask you, who was Eva
15 Sweden?

16 A. That's my e-mail address on my
17 Verizon.

18 Q. Okay.

19 A. (Perusing.)

20 Q. Are you finished?

21 A. I haven't read them all.

22 (Perusing.)

23 Q. Okay?

24 A. Yes, sir.

25 Q. Let's look at the first page.

1 AGERBRINK

2 to "They fucked up," I believe in my heart that
3 Model Services fucked up. And then when I say,
4 "Send me your ex and your number," my
5 girlfriend Jin, my neighbor, was going through
6 a divorce, and she wanted me to say something
7 to her husband. And so that was the name and
8 the number I asked for.

9 Q. So if I understand what you've just
10 explained, you had some assignment scheduled at
11 QVC?

12 A. It was the regular as always, and at
13 this time, remember I said earlier that Liz
14 said, because they would call so late, that the
15 agency had closed, that I would get a text
16 message from Jessica or from Athena, and then I
17 would give that text message right away to Liz,
18 so that she knows my schedule. So she knows
19 where I am at all times.

20 Q. I thought Liz knew your schedule.

21 A. Liz is the one who manages my
22 schedule.

23 Q. So didn't she know your schedule in
24 advance?

25 A. No.

1 AGERBRINK

2 Q. Why was that?

3 A. QVC determines the time that they
4 want -- Liz knows that I am working with their
5 client, QVC, on Thursday, Friday -- on
6 Wednesday, Thursday and Fridays, but Liz has no
7 way of knowing what time that they want to
8 start the fittings.

9 And there were a lot of times, as
10 you saw in the earlier text messages, that they
11 didn't decide the time until 10 o'clock in the
12 evening.

13 Q. They being QVC?

14 A. They being QVC, and they -- at that
15 time, the agency was closed. So in order not
16 to lose it, the text and then I would text Liz.
17 At this particular occasion, text or e-mail.

18 This particular day I moved -- not
19 that day, but I had moved when Liz couldn't get
20 ahold of me, and so she said we couldn't get
21 ahold of you all day, so you're no longer
22 needed for QVC is what she said.

23 Q. Now, you have no way of knowing
24 whether that was at the direction of QVC or
25 not, do you?

1 AGERBRINK

2 and I immediately picked up the phone and
3 called Athena herself. And I said I can't
4 believe this is happening, and she said I
5 confirmed this morning on my Verizon from
6 Michelle that the start time was such and such
7 time. I was moving today, and I had no way of
8 having e-mail access.

9 Q. That's what you explained to the
10 person Athena?

11 A. So Athena said, well, MSA is our
12 client, and you need to deal with your agency
13 on that. That was it.

14 So I was upset. I was upset. I
15 wanted to break the contract. I didn't think
16 of anything. I just was really, really upset.

17 Q. So did you then speak to Liz at MSA
18 to break the contract?

19 A. No, I was asked to come in by
20 Lynette, the front girl, and she said Susan
21 wants to talk to you, and it was about a week
22 that went by.

23 That was another week I wasn't
24 working. And I did not make any phone calls.
25 Susan asked me to come in and talk to her, and

1 AGERBRINK

2 broken the contract.

3 Q. Turn over to the next page, the
4 fourth page, the one with the time stamp of
5 12/3/2013.

6 A. Yes.

7 Q. You were chatting with Athena at
8 this point; is that right?

9 A. Yes, yes, but this is not me
10 writing. This is -- this is Athena writing to
11 me, yes. Yes.

12 So Alice is a technical designer.
13 It is written from Athena and Lucia is Athena's
14 boss. So Lucia --

15 Q. Who is it in the last two lines of
16 that communication who's saying, "I called them
17 back at 12 minutes later where I was told you
18 guys did not want to have anything to do with
19 me. I am resigning from them tomorrow"?

20 A. Yes, sir, I wrote that.

21 Q. And who were you resigning from?

22 A. Well, I was very, very angry, and I
23 guess I thought I could resign.

24 Q. From who?

25 A. From MSA, but I couldn't quit.

1 AGERBRINK

2 I came into the office and I sat down, and she
3 looked out the window, as usual, and I sat
4 down, and she was distraught, and I said to
5 her, you guys really fucked up, is what I used
6 those words.

7 But that was my meeting because
8 Susan asked me to come in, and then she was
9 arguing with Liz and Liz was arguing with her,
10 and I sat there and I listened to them. And I
11 said to them, you know, I didn't come in here
12 to argue. It would be great if we can find a
13 solution to this.

14 Q. Do you know who got fit modeling
15 assignments at QVC after that?

16 MR. DUGGER: Objection, vague.

17 A. Liz and I together -- well, she
18 wrote the letter. She wrote the e-mail
19 explaining to QVC that it was a
20 miscommunication, and Liz got me the job back
21 with QVC.

22 Q. Did there come a time where you did
23 break the contract with MSA?

24 MR. DUGGER: Objection, calls for a
25 legal conclusion.

1 AGERBRINK

2 A. I felt that MSA had broken the
3 contract way before that. I know there is
4 no -- there is nowhere in the contract where it
5 says that they have to pay you on time, but
6 after lying to me numerous times about not
7 being paid by QVC, and I was desperate to get
8 paid, and I asked if I could see if Model
9 Services had been paid or not.

10 I never talked about my rate or my
11 pay. I just wanted to see if -- and actually
12 it was on -- I think it was Liz who suggested,
13 ask them if you can -- you know, if they can
14 pay you.

15 So I said can you please pay -- you
16 know, can you please pay your client, MSA,
17 because I have to get paid. And so they took
18 me into the room where the girl is that writes
19 all the checks, and I saw it on the computer
20 screen. She showed me, here is invoice. It
21 was invoiced to Model Services, and we have
22 paid you.

23 So I knew then and there that they
24 were lying, and I didn't know what timing, but
25 after three months, I felt they had already

1 AGERBRINK

2 Q. Turn over to the next page with the
3 time stamp of 12/1/2013, and you're having a
4 chat there with Thierry Murray and with you,
5 Eva Agerbrink, correct?

6 A. Yes. Terri Murray was very upset
7 about what was happening with me, and she
8 wanted to start her own agency. So that's kind
9 of a cute little message.

10 Q. So you discussed --

11 A. No, she didn't start a modeling
12 agency. She always wanted to.

13 Q. What's this two-year contract with
14 QVC that's referenced there?

15 A. That is -- we are kind of joking
16 around. She is saying because she got her job
17 with QVC on her own, so she was an independent
18 contractor for them. They paid her directly,
19 and she basically managed her own schedule.
20 She took vacation whenever she wanted to. She
21 had a contract with them.

22 So since she got that job on her
23 own, it would have been great. We said that I
24 could work for her and not for Model Services
25 because Model Services had just acted so

1 AGERBRINK

2 Q. Was that also 20 or 30 years ago?

3 A. No, sir, that was --

4 Q. When was that?

5 A. After I left -- after my job with
6 New York & Company was terminated, after -- I
7 bought the store back in 2011.

8 Q. Did you have income from that store?

9 A. Yes, I bought the store -- I bought
10 the lease, and I bought the inventory in the
11 store, and I sold the inventory that I had
12 bought.

13 Q. Did you have a monthly income?

14 A. No, I did not have a monthly income.

15 Q. Was that between the time -- the two
16 times you worked for MSA?

17 A. Yes, sir.

18 Q. Have you done any work as an actress
19 since you began working for MSA the second
20 time?

21 A. I've done acting work in the past
22 three months.

23 Q. What were the circumstances of your
24 leaving New York & Company?

25 A. New York & Company had a change of

1 AGERBRINK

2 direction. Instead of having me as an
3 employee, they wanted to fit on more than one
4 body. So instead of having me as an employee,
5 and I guess they were saving money as well,
6 they would start hiring models from Model
7 Services.

8 So they went from having an employee
9 to hiring -- Model Services was their client,
10 and so we would only see models from -- coming
11 from Model Services.

12 Q. You say Model Services was their
13 client?

14 A. New York -- yeah, New York & Company
15 is a client of Model Services. So all the
16 models that we would have over at New York &
17 Company came from Model Services that came over
18 to do Go-Sees.

19 And then later on, they hired the
20 models from Model Services and eliminated my
21 position.

22 Q. Did you discuss with anyone from New
23 York & Company at that time the possibility
24 that you might file a lawsuit against them?

25 A. Yes, I did, but not because of

1 AGERBRINK

2 prior testimony.

3 A. If I need to take vacation, I need
4 to let my agency know first because they're the
5 ones -- they're the ones in charge of my
6 schedule.

7 Q. The client has given the agency days
8 and hours they want a model there?

9 MR. DUGGER: Objection, misstates
10 prior testimony.

11 Q. Isn't that right?

12 A. Right, but that's not always so
13 because with their client, Carole Hochman, I
14 didn't have a set schedule. Sometimes I was
15 asked to come for an hour and a half. The next
16 week, Liz would inform me you have no work this
17 week.

18 Q. Because Carole Hochman didn't have
19 any work?

20 A. Because they didn't have any
21 fittings, exactly.

22 Q. The client determines when it wants
23 to have a model there in terms of the day and
24 the hours; is that right?

25 MR. DUGGER: Objection, misstates

1 AGERBRINK

2 prior testimony.

3 MR. SPELFOGEL: I'm not asking
4 anything about prior testimony. I didn't
5 characterize prior testimony. I'm asking
6 a simple question.

7 Q. Isn't it true that the client
8 determines the day and the time it wants to
9 have a model there?

10 A. No, sir. The client has specific
11 fittings and they have a Go-See. They call up
12 the modeling agency --

13 Q. We are all passed that. We are
14 passed that.

15 So you have been selected,
16 designated as somebody that the client wishes
17 to have a fit model?

18 A. They will call up the agency to ask
19 if the model is available on such and such
20 time. There are times when I am already
21 working with a client.

22 Q. With a different client?

23 A. So Liz Pinto will say no, she can't
24 come on that day, but she can come on this day.

25 Q. On another day that's suitable for

1 AGERBRINK

2 your schedule; is that right?

3 A. Well, that's suitable for their
4 clients because she doesn't want me to not go
5 work for one of their clients and send me to
6 their client. So her job is to make sure that
7 I'm sent and I do as much work as I possibly
8 can. We are all workhorses.

9 Q. Would you say then that one of the
10 parts of Liz Pinto's job is to take from the
11 client the days and the hours they need a fit
12 model and then offer those hours and days to
13 you as a fit model?

14 MR. DUGGER: Objection, vague.

15 A. No, Ms. Pinto's job is much bigger
16 than that.

17 Q. Is that part of it?

18 A. You're putting her down because she
19 really is the key coordinator here. The client
20 will come to Liz, and they will say we need a
21 model, and then Liz will manage -- she will
22 look at my schedule, and she will say, okay,
23 she can do this, she can do this, she can do
24 this.

25 Then she will communicate. They

AGERBRINK

will negotiate a time that is best for them because she has my schedule in front of me. That's her job. She manages my schedule. She manages Monday through Friday.

And once she sees that this is a good opening, then she will call me and she will say I'm going to send you there on that day, and I said great. You never turn down a booking. You never turn down a Go-See. It's crazy to do. And you go there.

So it's really the client gives her a window, a window of when he or she wants to see their models, but she's the one who coordinates everything. She coordinates my schedule. She makes sure that it's all fitted in.

There were a time when -- when Carole Hochman needed me on a day that I was working in Pennsylvania. So Liz said how can we do this, and she said you're going to have to come up to New York after you're finished work. I'm going to cut your hours short with QVC.

And so she cut them shorter that

1 AGERBRINK

2 way, so that I could finish earlier, so I can
3 go up and work for Carole Hochman and then come
4 back down.

5 So it's really Liz that's the key
6 component here.

7 Q. Now, when you worked for MSA, did
8 you discuss with Liz Pinto or anybody else from
9 MSA the number of hours a week you wanted to
10 work?

11 A. Yes. Yes, sir.

12 Q. Did you discuss the number of days a
13 week you wanted to work?

14 A. I asked, please give me as much work
15 as, you know -- I want to work as much as I
16 can. I want to work a lot of money -- I would
17 like to make some money.

18 I discussed it with Susan, too, and
19 she said to me, well, you know, business is
20 tough, business is hard, business is tough.
21 They want -- you know, they want newer models.
22 They want, you know, fresh models. They want
23 younger models. They want smaller sizes. She
24 kept telling me business is tough, but I kept
25 asking them to give me --

1 AGERBRINK

2 Q. As much business as possible?

3 A. Yeah, because that was what I agreed
4 with Liz. I said, Liz, the expenses of going
5 down to Pennsylvania and having the little room
6 that I had down there with some weeks you're
7 only working 16 hours and you pay taxes on top
8 of that. There wasn't much left over, but I
9 kept telling her that I will keep doing this
10 because I took -- I accepted their client, QVC,
11 I accepted the job, although I misunderstood
12 it, but I did accept it. I never give up. I'm
13 a hard worker. I would never give up.

14 I always believed that the agency
15 was doing the right thing. I always believed
16 that they really, truly were trying to find me
17 more work. And I said I keep working here -- I
18 will keep working here, you know, just promise
19 me that you keep looking for clients up in New
20 York, so that I can -- so that I can justify
21 the little money I'm making here.

22 If you can get me a few more, you
23 know, jobs up in New York, then you know -- and
24 I really, truly believed up until the very,
25 very end that they were doing all they could.